

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

CWP No.1430 of 2008 with CWP(T) No.157 of 2008.

Date of decision: 21.06.2012.

(1) CWP No.1430 of 2008.

Sushil Kumar son of Rasalu Ram, resident of Kangreri, P.O. Dhiala, Tehsil Indora, District Kangra, H.P. presently serving as Class-IV in Dr.Rajendra Prasad Medical College, Tanda, District Kangra, H.P.

... ..Petitioner

Versus

1. State of Himachal Pradesh through Principal Secretary (Forest), Government of Himachal Pradesh, Shimla-171 002.
2. State of Himachal Pradesh through Secretary (Health) to the Government of Himachal Pradesh, Shimla-171 002.
3. Director, Health & Family Welfare Department, Himachal Pradesh, Shimla-171 009.
4. H.P. State Forest Corporation Limited, through its Managing Director, S.D.A. Complex, Kasumpti, Shimla-171 009.
5. Divisional Manager, Forest Working Division, H.P. State Forest Corporation, Fatehpur, District Kangra, H.P.

... ..Respondents

(2) CWP(T) No.157 of 2008.

Sushil Kumar son of Shri Rasaloo Ram, R/O Kangreri, P.O. Dhiala, Tehsil Indora, District Kangra, at present Class-IV. Dr.Rajindera Parshad Medical College, Tanda, District Kangra.

... ..Petitioner

Versus

1. State of Himachal Pradesh through Principal Secretary, Forest, Government of Himachal Pradesh, Shimla-2.
2. The H.P. State Forest Corporation Ltd., through Managing Director, Shimla-9.
3. The Divisional Manager, Forest Working Division, Fatehpur.
4. The State of Himachal Pradesh, through its Secretary Health, Government of Himachal Pradesh, Shimla-2.

5. The Director of Health Family Welfare Deptt.,
Himachal Pradesh, Shimla-9.

... .. Respondents

**Civil Writ Petition under Article 226 of the
Constitution of India.**

Coram

The Hon'ble Mr. Justice Dev Darshan Sud, J.

Whether approved for reporting ?¹ No.

CWP No.1430 of 2008.

For the Petitioner: Mr. Ajay Sharma, Advocate.

**For Respondents No.1: Mr. P.K. Sharma, Additional Advocate
to 3. General with Mr. R.P. Singh, Assistant
Advocate General.**

**For Respondents No.4: Mr. V.B. Verma, Advocate.
and 5.**

CWP(T) 157 of 2008.

For the Petitioner: Mr. Ajay Sharma, Advocate.

**For Respondents No.1: Mr. P.K. Sharma, Additional Advocate
4 and 5. General with Mr. R.P. Singh, Assistant
Advocate General.**

For Respondents No.2 & 3: Mr. V.B. Verma, Advocate.

Dev Darshan Sud, J.

The petitioner has approached this Court with the prayer that the services of the petitioner be regularized after completion of eight years of daily waged service and to absorb/deploy the petitioner in any other Department as a Class-III employee.

2. The facts necessary for consideration of this Court are that the petitioner passed his +2 examination from the Himachal Pradesh Board of School Education. He was engaged as Depot Watcher on daily wages basis on 28.1.1989 by the 5th respondent. The petitioner submits

¹ *Whether the reporters of Local Papers may be allowed to see the judgement?*

Yes.

that in accordance with the decision of the Supreme Court in ***Mool Raj Upadhyaya and Others vs. State of Himachal Pradesh and Others, (1994)2 SLR 377***, daily wagers, having completed 10 years of service with 240 days in every calendar year, are required to be regularized. Pursuant to this judgment, the State took a decision that the services will be regularized after eight years. Petitioner prays that his services be regularized w.e.f. 27.1.1997. The pleading is that from June, 2000 to September, 2007, 1030 employees of the category of the petitioner were declared surplus. They were directed to be taken/absorbed in any other Department from this Department for regularization. He was relieved from service on 20.8.2007 vide Annexure P-5. The order states that according to the directions of the Principal Secretary(Forest) addressed to the Principal Secretary(Health), the employees as named in the order including the petitioner were directed to report for duty alongwith original documents.

3. The case pleaded by the petitioner is set out in Annexure P-6. His grievance is that the employees with lesser qualification have been absorbed as Clerks. They were also working with the Forest Corporation prior to they are being relieved. Annexure P-6 reads:-

**"Health and Family Welfare Department
Himachal Pradesh, Shimla-9**

**Subject: Information under RTI Act, 2005
asked by Sh.Sushil Kumar.**

Reference U.O. Note No.HFW-H(VI)B(12)1/2008 dated 7.7.2009, on the subject cited above and to state that out of 133 daily wagers workers allocated to Health Department, 17, daily wagers absorbed as Clerk in the Department from the H.P. State Forest Corporation Ltd. Detail wise information i.e. qualification and joining time of these 17 Clerks is given as under:-

Sr. No.	Name Sh.Smt.	Qualification	Date of Joining in Health Department
1.	Karan Singh	M.A.	5.9.07
2.	Sunder Singh	B.A.	6.9.07
3.	Hema Thakur	M.A.	18.9.07
4.	Kripal Singh	10+2	7.9.07
5.	Harvinder Kaur	Matric/Prabhakar	6.9.07
6.	Rajinder Kumar	Matric with 2 nd Division	9/2007
7.	Santosh Negi	10+2	8.9.07
8.	Sunila Devi	10+2	6.9.07
9.	Manjeet Kaur	B.A.	6.9.07
10.	Manjeet Kumari	Matric with 3 rd Division	
11.	Prabha Chauhan	Matric with 3 rd division	3/10/07
12.	Shakuntala Devi	Matric with 3 rd division	10/07
13.	Parwati Bhagta	Matric with 3 rd division	5/10/07
14.	Uma Negi	Matric with 3 rd division	4/10/07
15.	Illa Hansreta	Matric with 3 rd division	10/07
16.	Meena Sharma	Matric with 3 rd division	3.10.07
17.	Shyama Dharaik	Matric with 3 rd division	10.10.07

Relaxation in qualification in respect of clerks from Sr.No.10 to 17 was sent to the Government vide this Directorate letter No.HFW-H(1)B(4)32/80 dated 17.9.2008 and accordingly Govt.vide their letter No.Health-A-B(6)29/02-Loose dated 29th September, 2007 has conveyed the

same to this department. However, photocopies of this Directorate letter and the letter of Government as well is enclosed herewith for ready references please.

Sd/-

*Administrative Officer
H&FW Dte, Shimla-9"*

4. These pleadings are denied by the respondents. The case set out in a nutshell is that those of the employees of the Forest Corporation, who were not even qualified to be considered for Class-III posts, have been given relaxation in educational qualification etc. and thereafter have been absorbed regularly against that post. The respondents denied these allegations. A plain reading of Annexure P-6 shows the absorption of even third division matriculates as Clerks. It is undisputed before me that the petitioner possesses the requisite qualification has not been absorbed against the post of Clerk. It is also undisputed before me that those of the Class-IV employees who were not qualified were later on absorbed as Clerks after grant of relaxation in educational qualifications.

5. The case of the petitioner cannot be treated any differently. When relaxation to the other employees can be granted, there is no reason as to why the petitioner cannot be absorbed against a Class-III post. It is not clear as to what is the basis on which relaxation has been granted or the criteria adopted by

the respondents for absorption of those of the employees who do not have the requisite educational qualifications, to be considered/appointed as Clerks. This is clearly a pick and choose policy which has been adopted by the State. There is also no explanation as to why the petitioner has not been granted work charged status with the Corporation after he had completed the requisite number of years. In any event, there is not even an iota of explanation as to why the petitioner has been left out from consideration to be appointed against Class-III posts on absorption in other Department.

6. This writ petition is allowed with the directions that the respondents shall consider the case of the petitioner in terms of (a) **Mool Raj Upadhyaya's** case (supra), (b) consider him for appointment to Class-III, post with those of the employees whose names have been mentioned in Annexure P-6.

7. Both these writ petitions are disposed of. No order as to costs.

8. All miscellaneous applications are disposed of.

June 21, 2012.
(aks)

(Dev Darshan Sud)
Judge.